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7 **Attorneys for Defendants**  
8 **Bank of America, N.A.;**  
9 **Deutsche Bank National Trust Company;**  
10 **The Bank of New York Mellon; and**  
11 **The Bank of New York Mellon Trust Company, N.A.**  
12 **In Their Capacities as Alleged**  
13 **Trustees and/or Successor Trustees of**  
14 **Specific Trusts Identified in the**  
15 **Fourth Amended Complaint**

16 UNITED STATES DISTRICT COURT  
17 CENTRAL DISTRICT OF CALIFORNIA  
18 WESTERN DIVISION

19 UNITED STATES, ex rel. SERVE ALL  
20 HELP ALL, INC. D/B/A NON-PROFIT  
21 ALLIANCE OF CONSUMER  
ADVOCATES, et al.,

22 Plaintiffs,

23 vs.

24 ACE SECURITIES CORP. HOME  
25 EQUITY LOAN TRUST 2004-FM1 BY  
26 HSBC BANK USA AS TRUSTEE, et  
27 al.,

28 Defendants.

Case No. 14-cv-00210-TJH-DFM

**DEFENDANTS' REQUEST FOR  
JUDICIAL NOTICE IN SUPPORT  
OF JOINT MOTION TO DISMISS  
RELATORS' FOURTH AMENDED  
COMPLAINT**

Judge: Honorable Terry J. Hatter

[Motion to Dismiss filed concurrently  
herewith]

Hearing

Date: November 21, 2016

Time: UNDER SUBMISSION

Place: Courtroom 17

Judge: Hon. Terry J. Hatter, Jr.



**TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

**PLEASE TAKE NOTICE** that Defendants Bank of America, N.A. (erroneously sued as “LaSalle Bank Succeeded By Bank of America Trustee”), Citibank, N.A. (“Citibank”) (erroneously sued as “Citibank Trustee”), HSBC Bank USA, N.A. (“HSBC”) (erroneously sued as “HSBC Bank USA Trustee”), The Bank of New York Mellon f/k/a The Bank of New York and The Bank of New York Mellon Trust Company, N.A. f/k/a The Bank of New York Trust Company, N.A. (collectively, “BYNM”) (erroneously sued as “Bank of New York Trustee” and “J.P. Morgan Chase Bank Trustee”), Deutsche Bank National Trust Company, (“DBNTC”) (erroneously sued as “Deutsche Bank National Trust Company Trustee”), U.S. Bank National Association (“U.S. Bank”) (erroneously sued as “U.S. Bank Trustee”), and Wells Fargo Bank, N.A. (“Wells Fargo”) (erroneously sued as “Wells Fargo Bank Trustee”) (all defendants, collectively, as “Defendants”), in their capacities as alleged trustees and/or successor trustees of specific residential mortgage-backed securities (“MBS”) trusts referenced in the Fourth Amended Complaint (the “Complaint”) filed by Relators Serve All Help All, Inc. d/b/a Non-Profit Alliance of Consumer Advocates (“SAHA”), Jose Arturo Abad-Vega a/k/a Pepe Abad a/k/a Pepi Abad (“Abad-Vega”), Danny Williams (“Williams”), and Moses Hall (“Hall”) (collectively, “Relators”), respectfully request that the Court take judicial notice of the documents listed herein, true and correct copies or excerpts of which are attached hereto, in support of its concurrently filed Motion to Dismiss Pursuant to Federal Rules of Civil Procedure 8, 9, 12(b)(1), and 12(b)(6).

**LEGAL STANDARD**

Courts may rely upon matters subject to judicial notice when ruling upon motions to dismiss. *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007) (When ruling on motions to dismiss, “courts must consider the complaint in its entirety ... in particular, documents incorporated into the complaint by reference, and matters of which a court may take judicial notice.”); *MGIC Indemnity Corp. v.*



1 *Weisman*, 803 F. 2d 500, 504 (9th Cir. 1986) (“On a motion to dismiss, we may take  
 2 judicial notice of matters of public record outside the pleadings.”). The Federal Rules  
 3 of Evidence permit courts to take judicial notice of matters “capable of accurate and  
 4 ready determination by resort to sources whose accuracy cannot reasonably be  
 5 questioned,” and direct courts to take judicial notice “if a party requests it and the  
 6 court is supplied with the necessary information.” Fed. R. Evid. 201(b)(1), (c)(2).  
 7 Under this Rule, the Court may take judicial notice “of documents attached or  
 8 incorporated into the complaint,” *E.I. du Pont de Nemours and Co. v. Kolon Indus.,*  
 9 *Inc.*, 637 F.3d 435, 448 (4th Cir. 2011), and under the incorporation by reference  
 10 doctrine, a court may “look beyond the pleadings” by taking judicial notice of  
 11 “documents whose contents are alleged in a complaint and whose authenticity no  
 12 party questions, but which are not physically attached to the [plaintiff’s] pleading.”  
 13 *Davis v. HSBC Bank Nevada, N.A.*, 691 F.3d 1152, 1160 (9th Cir. 2012).

### 14 **REQUEST FOR JUDICIAL NOTICE**<sup>1</sup>

15 Defendants request that the Court take judicial notice of five categories of  
 16 documents, each of which is appropriate for judicial notice.

#### 17 **I. News Articles And Press Releases**

18 Exhibits 1- 9 are true and correct copies of germane media reports.<sup>2</sup> Media  
 19 reports and press releases are subject to judicial notice. *See Ritter v. Hughes Aircraft*  
 20 *Co.*, 58 F.3d 454 (9th Cir. 1995) (holding district court properly took judicial notice of  
 21 newspaper article); *California ex rel. Bates v. Mortgage Elec. Registration Sys., Inc.*,  
 22 2:10-CV-01429, 2011 WL 892646, at \* 3 (E.D. Cal. Mar. 11, 2011) (taking judicial  
 23 notice of news and journal articles to determine subject matter jurisdiction in False

24 <sup>1</sup> For the Court’s convenience, some of the Exhibits attached hereto are relevant  
 25 excerpts of the full documents and/or do not contain all of the original document’s  
 26 attachments. In such cases, a link to the full version of the document is also provided.

27 <sup>2</sup> The documents that are the subject of this Request for Judicial Notice are  
 28 representative of a much larger body of media and government reporting concerning  
 servicer participation in MHA programs. As noted in Defendants’ Joint Motion to  
 Dismiss, by identifying earlier allegations, Defendants do not concede that any such  
 allegations have any factual basis.



1 Claims Act case); *Plevy v. Haggerty*, 38 F. Supp. 2d 816, 821-822 (C.D. Cal. 1998)  
 2 (taking judicial notice of news articles and press releases submitted in support of  
 3 motion to dismiss); *In re Homestore.com, Inc. Sec. Litig.*, 347 F. Supp. 2d 814, 817  
 4 (C.D. Cal. 2004) (“the court may take judicial notice of press releases”).

- 5 • **Exhibit 1:** David Streitfeld, *Rules for Mortgage Servicers are Criticized as*  
 6 *Ineffective*, N.Y. TIMES, Apr. 13, 2011, B4
- 7 • **Exhibit 2:** Victoria McGrane, Alan Zibel, and Robin Sidel, *Global Finance: Big*  
 8 *Banks Get Foreclosure Orders --- Regulators Detail Steps Lenders Must Take to*  
 9 *Revamp Processes; Fines Are Still to Come*, WALL ST. J., Apr. 14, 2011, C3
- 10 • **Exhibit 3:** Julie Schmit & Paul Davidson, *Major Banks Told to Review*  
 11 *Foreclosures*, USA TODAY, Apr. 14, 2011, B1
- 12 • **Exhibit 4:** Alan Zibel, *Regulator: Banks Face Costly Foreclosure Fixes*, WALL ST.  
 13 J., Apr. 14, 2011
- 14 • **Exhibit 5:** Mary Podmolik, *Bank of America, JPMorgan, and Wells Fargo Bank*  
 15 *Cited for Poor Performance on HAMP*, CHICAGO TRIBUNE (June 9, 2011)
- 16 • **Exhibit 6:** Nelson D. Schwartz and Julie Creswell, *Mortgage Plan Gives Billions to*  
 17 *Homeowners, But with Exceptions*, N.Y. TIMES, Feb. 10, 2012, B1
- 18 • **Exhibit 7:** Jessica Silver-Greenberg, *Regulators and 13 Banks Complete \$9.3*  
 19 *Billion Deal for Foreclosure Relief*, N.Y. TIMES, Feb. 28, 2013
- 20 • **Exhibit 8:** Hugh Son, *Secret Inside BofA Office CEO Stymied Needy Homeowners*,  
 21 BLOOMBERG NEWS (Sept. 15, 2013)
- 22 • **Exhibit 9:** Deon Roberts, *Watchdog Says Bank of America, JPMorgan have Most*  
 23 *Mortgage Complaints Under TARP*, THE CHARLOTTE OBSERVER (Jan. 30, 2014)

## 24 **II. Congressional Records**

25 Exhibits 10-17 are excerpts from Congressional hearings, including testimony  
 26 and statements supplied to Congress in connection with Congressional hearings.  
 27 Courts take judicial notice of documents concerning Congressional proceedings  
 28 because such documents are “the types of documents for which the accuracy cannot



1 reasonably be questioned.” *321 Studios v. Metro Goldwyn Mayer Studios, Inc.*, 307 F.  
 2 Supp. 2d 1085, 1107 (N.D. Cal. 2004) (taking judicial notice of congressional  
 3 testimony); *Anschutz Corp. v. Merrill Lynch & Co. Inc.*, 785 F. Supp. 2d 799, 834  
 4 (N.D. Cal. 2011) (same); *F.T.C. v. Neovi, Inc.*, 604 F.3d 1150, 1157 n.5 (9th Cir.  
 5 2010) (taking judicial notice of “various congressional documents”).

6 • **Exhibit 10:** Field Hearing Before the Congressional Oversight Panel,  
 7 *Foreclosure Mitigation Under the Troubled Asset Relief Program* (Sept. 24, 2009)  
 8 (prepared statement of Edward Golding, Senior Vice President, Economics and  
 9 Policy, Freddie Mac)

10 • **Exhibit 11:** Congressional Oversight Panel, *April Oversight Report:*  
 11 *Evaluating Progress on TARP Foreclosure Mitigation Programs* (Apr. 14, 2010),  
 12 available at:  
 13 <[https://cybercemetery.unt.edu/archive/cop/20110401232823/http://cop.senate.gov](https://cybercemetery.unt.edu/archive/cop/20110401232823/http://cop.senate.gov/reports/library/report-041410-cop.cfm)  
 14 [/reports/library/report-041410-cop.cfm](https://cybercemetery.unt.edu/archive/cop/20110401232823/http://cop.senate.gov/reports/library/report-041410-cop.cfm)>

15 • **Exhibit 12:** Hearing Before the Congressional Oversight Panel, *Treasury’s Use*  
 16 *of Private Contractors Under TARP* (September 22, 2010) (prepared statement of  
 17 Paul Heran, Program Executive, Making Home Affordable - Compliance, Freddie  
 18 Mac)

19 • **Exhibit 13:** Congressional Oversight Panel, *November Oversight Report:*  
 20 *Examining the Consequences of Mortgage Irregularities for Financial Stability*  
 21 *and Foreclosure Mitigation* (Nov. 16, 2010), available at:  
 22 <[https://cybercemetery.unt.edu/archive/cop/20110401233819/http://cop.senate.gov](https://cybercemetery.unt.edu/archive/cop/20110401233819/http://cop.senate.gov/reports/library/report-111610-cop.cfm)  
 23 [/reports/library/report-111610-cop.cfm](https://cybercemetery.unt.edu/archive/cop/20110401233819/http://cop.senate.gov/reports/library/report-111610-cop.cfm)>

24 • **Exhibit 14:** Hearing Before the House Committee on the Judiciary, *Foreclosed*  
 25 *Justice: Causes and Effects of the Foreclosure Crisis (Part I & II, 111<sup>th</sup> Congress,*  
 26 *2d Sess., at 20 (Dec. 2, 2010) (prepared statement of Phyllis Caldwell, Chief of*  
 27 *Homeownership Preservation Office, Department of Treasury), available at:*  
 28 <<https://judiciary.house.gov/wp-content/uploads/2010/12/Caldwell101202.pdf>>



- 1 • **Exhibit 15:** Congressional Oversight Panel, *December Oversight Report: A*  
 2 *Review of the Treasury's Foreclosure Prevention Programs* (Dec. 14, 2010),  
 3 available at:  
 4 <[https://cybercemetery.unt.edu/archive/cop/20110401232915/http://cop.senate.gov](https://cybercemetery.unt.edu/archive/cop/20110401232915/http://cop.senate.gov/reports/library/report-121410-cop.cfm)  
 5 [/reports/library/report-121410-cop.cfm](https://cybercemetery.unt.edu/archive/cop/20110401232915/http://cop.senate.gov/reports/library/report-121410-cop.cfm)>
- 6 • **Exhibit 16:** Congressional Oversight Panel, *March Oversight Report: The*  
 7 *Final Report of the Congressional Oversight Panel* (Mar. 16, 2011), available at:  
 8 <[https://cybercemetery.unt.edu/archive/cop/20110401223133/http://cop.senate.gov](https://cybercemetery.unt.edu/archive/cop/20110401223133/http://cop.senate.gov/reports/library/report-031611-cop.cfm)  
 9 [/reports/library/report-031611-cop.cfm](https://cybercemetery.unt.edu/archive/cop/20110401223133/http://cop.senate.gov/reports/library/report-031611-cop.cfm)>
- 10 • **Exhibit 17:** Hearing Before the Senate Committee on Banking, Housing, and  
 11 Urban Affairs, *TARP Oversight: Evaluating Returns on Taxpayer Investments*, S.  
 12 Hrg 112-82, 290 (Mar. 17, 2011) (prepared statement of Neil Barofsky, Special  
 13 Inspector General of TARP)

### 14 **III. Government Publications**

#### 15 **a. Government Reports and Press Releases**

16 Exhibits 18-33 are exemplars and excerpts of reports published by federal  
 17 agencies and departments, or made available to the public through the websites of  
 18 federal agencies and departments. “Government reports and publications,” as well as  
 19 information available on government websites, are judicially noticeable. *Lemperle v.*  
 20 *Washington Mut. Bank*, 10CV1550-MMA POR, 2010 WL 3958729, at \*3 (S.D. Cal.  
 21 Oct. 7, 2010); *Barron v. Reich*, 13 F.3d 1370, 1377 (9th Cir. 1994) (recognizing  
 22 records and reports of government agencies are “clearly” subject to judicial notice);  
 23 *Lamle v. City of Santa Monica*, CV 04-6355-GHK SH, 2010 WL 3734868, at \*5  
 24 (C.D. Cal. July 23, 2010) (taking judicial notice of “government agency reports of  
 25 public record”).

- 26 • **Exhibit 18:** U.S. Department of the Treasury, *Press Release: Relief for*  
 27 *Responsible Homeowners: Treasury Announces Requirements for the Making*  
 28 *Home Affordable Program* (Mar. 4, 2009)



- 1 • **Exhibit 19:** Government Accountability Office, *Troubled Asset Relief*  
2 *Program: Treasury Actions Needed to Make the Home Affordable Modification*  
3 *Program More Transparent and Accountable*, GAO-09-837 (July 23, 2009),  
4 available at: <<http://www.gao.gov/assets/300/292806.pdf>>
- 5 • **Exhibit 20:** Office of the Special Inspector General for TARP, *Quarterly*  
6 *Report to Congress*, (October 21, 2009), available at:  
7 <[https://www.sigtar.gov/Quarterly%20Reports/October2009\\_Quarterly\\_Report\\_t](https://www.sigtar.gov/Quarterly%20Reports/October2009_Quarterly_Report_to_Congress.pdf)  
8 [o\\_Congress.pdf](https://www.sigtar.gov/Quarterly%20Reports/October2009_Quarterly_Report_to_Congress.pdf)>
- 9 • **Exhibit 21:** Government Accountability Office, *Home Affordable Modification*  
10 *Program Continues to Face Implementation Challenges*, (March 25, 2010),  
11 available at: <<http://www.gao.gov/assets/130/124358.pdf>>
- 12 • **Exhibit 22:** Office of the Special Inspector General for TARP, *Factors*  
13 *Affecting Implementation of the Home Affordable Modification Program* (Mar. 25,  
14 2010), available at:  
15 <[https://www.sigtar.gov/Audit%20Reports/Factors\\_Affecting\\_Implementation\\_o](https://www.sigtar.gov/Audit%20Reports/Factors_Affecting_Implementation_of_the_Home_Affordable_Modification_Program.pdf)  
16 [f\\_the\\_Home\\_Affordable\\_Modification\\_Program.pdf](https://www.sigtar.gov/Audit%20Reports/Factors_Affecting_Implementation_of_the_Home_Affordable_Modification_Program.pdf)>
- 17 • **Exhibit 23:** Government Accountability Office, *Troubled Asset Relief*  
18 *Program: Further Actions Needed to Fully and Equitably Implement Foreclosure*  
19 *Mitigation Programs*, GAO-10-634 (Washington, D.C.: June 24, 2010), available  
20 at: <<http://www.gao.gov/new.items/d10634.pdf>>
- 21 • **Exhibit 24:** Government Accountability Office, *Troubled Asset Relief*  
22 *Program: Treasury Continues to Face Implementation Challenges and Data*  
23 *Weaknesses in Its Making Home Affordable Program*, GAO-11-288 (Washington,  
24 D.C.: Mar. 17, 2011), available at: <<http://www.gao.gov/assets/320/316715.pdf>>
- 25 • **Exhibit 25:** Fed. Reserve Sys. et al., *Interagency Review of Foreclosure*  
26 *Policies and Practices* (Apr. 2011), available at: <[https://www.occ.gov/news-](https://www.occ.gov/news-issuances/news-releases/2011/nr-occ-2011-47a.pdf)  
27 [issuances/news-releases/2011/nr-occ-2011-47a.pdf](https://www.occ.gov/news-issuances/news-releases/2011/nr-occ-2011-47a.pdf)>
- 28 • **Exhibit 26:** Government Accountability Office, *Troubled Asset Relief*



1      *Program: Results of Housing Counselors Survey on Borrowers' Experiences with*  
 2      *the Home Affordable Modification Program*, GAO-11-367R (Washington, D.C.:  
 3      May 26, 2011), available at: <<http://www.gao.gov/assets/100/97516.pdf>>

4      • **Exhibit 27:**      Office of the Special Inspector General for TARP, *Quarterly*  
 5      *Report to Congress*, (January 26, 2012), available at:  
 6      <[https://www.sigtar.gov/Quarterly%20Reports/January\\_26\\_2012\\_Report\\_to\\_Congress.pdf](https://www.sigtar.gov/Quarterly%20Reports/January_26_2012_Report_to_Congress.pdf)>  
 7      gress.pdf>

8      • **Exhibit 28:**      Government Accountability Office, *Foreclosure Mitigation:*  
 9      *Agencies Could Improve Effectiveness of Federal Efforts with Additional Data*  
 10      *Collection and Analysis*, GAO-12-296 (Washington, D.C.: June 28, 2012),  
 11      available at: <<http://www.gao.gov/assets/600/592028.pdf>>

12      • **Exhibit 29:**      Government Accountability Office, *Foreclosure Review:*  
 13      *Opportunities Exist to Further Enhance Borrower Outreach Efforts*, GAO-12-776  
 14      (June 29, 2012), available at: <<http://www.gao.gov/assets/600/592059.pdf>>

15      • **Exhibit 30:**      Government Accountability Office, *Troubled Asset Relief*  
 16      *Program: Further Actions Needed to Enhance Assessments and Transparency of*  
 17      *Housing Programs*, GAO-12-783 (Washington, D.C.: July 19, 2012), available at:  
 18      <<http://www.gao.gov/assets/600/592707.pdf>>

19      • **Exhibit 31:**      Government Accountability Office, *Foreclosure Review: Lessons*  
 20      *Learned Could Enhance Continuing Reviews and Activities Under the Amended*  
 21      *Consent Orders*, GAO-13-277 (Mar. 26, 2013), available at:  
 22      <<http://www.gao.gov/assets/660/653327.pdf>>

23      • **Exhibit 32:**      Office of the Special Inspector General for TARP, *Quarterly*  
 24      *Report to Congress*, (July 24, 2013), available at:  
 25      <[https://www.sigtar.gov/Quarterly%20Reports/July\\_24\\_2013\\_Report\\_to\\_Congress.pdf](https://www.sigtar.gov/Quarterly%20Reports/July_24_2013_Report_to_Congress.pdf)>  
 26      ss.pdf>

27      • **Exhibit 33:**      Office of the Special Inspector General for TARP, *Quarterly*  
 28      *Report to Congress*, (January 29, 2014), available at:



1 <[https://www.sig tarp.gov/Quarterly%20Reports/January\\_29\\_2014\\_Report\\_to\\_Congress.pdf](https://www.sig tarp.gov/Quarterly%20Reports/January_29_2014_Report_to_Congress.pdf)>

### 3 **b. Agency Consent Orders And Agreements**

4 Exhibits 34-38 are exemplars and excerpts of Consent Orders and Agreements  
 5 between the Department of Treasury and certain Defendants. As agreements between  
 6 the government and certain Defendants, the accuracy of such matters cannot be  
 7 questioned, and they are properly judicially noticeable. *See Argueta v. J.P. Morgan*  
 8 *Chase*, 787 F. Supp. 2d 1099, 1103 (E.D. Cal. 2011); *see also Disabled Rights Action*  
 9 *Comm. v. Las Vegas Events, Inc.*, 375 F.3d 861, 866 n. 1 (9th Cir. 2004) (taking  
 10 judicial notice of agreements to which the government was a party); *Transmission*  
 11 *Agency of N. Cal. v. Sierra Pac. Power Co.*, 295 F.3d 918, 924 n. 3 (9th Cir. 2002)  
 12 (taking judicial notice of order from a federal agency).

13 • **Exhibit 34:** Financial Agency Agreement for a Homeownership Preservation  
 14 Program under the Emergency Economic Stabilization Act of 2008, between the  
 15 U.S. Department of the Treasury and Freddie Mac (February 18, 2009), available  
 16 at: <[https://www.treasury.gov/initiatives/financial-](https://www.treasury.gov/initiatives/financial-stability/procurement/faa/Financial_Agency_Agreements/Freddie%20Mac%20Financial%20Agency%20Agreement.pdf)  
 17 [stability/procurement/faa/Financial\\_Agency\\_Agreements/Freddie%20Mac%20Fin](https://www.treasury.gov/initiatives/financial-stability/procurement/faa/Financial_Agency_Agreements/Freddie%20Mac%20Financial%20Agency%20Agreement.pdf)  
 18 [ancial%20Agency%20Agreement.pdf](https://www.treasury.gov/initiatives/financial-stability/procurement/faa/Financial_Agency_Agreements/Freddie%20Mac%20Financial%20Agency%20Agreement.pdf)>

19 • **Exhibit 35:** Amended and Restated Commitment to Purchase Financial  
 20 Instrument and Servicer Participation Agreement (SPA), BAC Home Loan  
 21 Servicing, L.P. and Fannie Mae, (January 25, 2010), available at:  
 22 <[https://www.treasury.gov/initiatives/financial-stability/TARP-](https://www.treasury.gov/initiatives/financial-stability/TARP-Programs/housing/mha/Documents_Contracts_Agreements/093010bankofamerica homeloansSPA(incltransmittal)-r.pdf)  
 23 [Programs/housing/mha/Documents\\_Contracts\\_Agreements/093010bankofamerica](https://www.treasury.gov/initiatives/financial-stability/TARP-Programs/housing/mha/Documents_Contracts_Agreements/093010bankofamerica homeloansSPA(incltransmittal)-r.pdf)  
 24 [homeloansSPA\(incltransmittal\)-r.pdf](https://www.treasury.gov/initiatives/financial-stability/TARP-Programs/housing/mha/Documents_Contracts_Agreements/093010bankofamerica homeloansSPA(incltransmittal)-r.pdf)>

25 • **Exhibit 36:** Consent Orders, Federal Reserve Board, available at:  
 26 <<https://www.federalreserve.gov/newsevents/press/enforcement/enf20110413a1.pdf>  
 27 [f](https://www.federalreserve.gov/newsevents/press/enforcement/enf20110413a1.pdf)>



- Consent Order (Bank of America), *In re Bank of America Corp.*, Federal Reserve Board of Governors, Docket No. 11-029-B-HC (April 13, 2011);
- Consent Order (Citi), *In re Bank of America Corp.*, Federal Reserve Board of Governors, Docket No. 11-029-B-HC (April 13, 2011);
- Consent Order (US Bank), *In re Bank of America Corp.*, Federal Reserve Board of Governors, Docket No. 11-029-B-HC (April 13, 2011); and
- Consent Order (Wells Fargo), *In re Bank of America Corp.*, Federal Reserve Board of Governors, Docket No. 11-029-B-HC (April 13, 2011)

• **Exhibit 37:** Consent Orders, Office of the Comptroller of the Currency, available at: <<https://www.occ.gov/news-issuances/news-releases/2011/nr-occ-2011-47b.pdf>>

- Consent Order (Bank of America), *In re Bank of America Corp.*, Comptroller of the Currency, Docket No. AA-EC-11-12 (April 13, 2011);
- Consent Order (Citi), *In re Bank of America Corp.*, Comptroller of the Currency, Docket No. AA-EC-11-12 (April 13, 2011);
- Consent Order (US Bank), *In re Bank of America Corp.*, Comptroller of the Currency, Docket No. AA-EC-11-12 (April 13, 2011); and
- Consent Order (Wells Fargo), *In re Bank of America Corp.*, Comptroller of the Currency, Docket No. AA-EC-11-12 (April 13, 2011)

• **Exhibit 38:** Amendments to Consent Orders, Office of the Comptroller of Currency, available at: <<https://www.occ.gov/static/enforcement-actions/ea2013-127.pdf>>

- Amendment to Consent Order (Bank of America), *In re Bank of America, N.A.*, Comptroller of the Currency, AA-EC-11-12 (February 28, 2013);
- Amendment to Consent Order (Citi), *In re Bank of America, N.A.*, Comptroller of the Currency, AA-EC-11-12 (February 28, 2013);
- Amendment to Consent Order (US Bank), *In re Bank of America, N.A.*, Comptroller of the Currency, AA-EC-11-12 (February 28, 2013); and



1 Amendment to Consent Order (Wells Fargo), *In re Bank of America, N.A.*,  
2 Comptroller of the Currency, AA-EC-11-12 (February 28, 2013)

3 **c. Department of Treasury Handbooks, Directives, and Other Guidance**

4 Exhibits 39-61 are exemplars and excerpts of MHA Compensation Matrices,  
5 MHA Directives, MHA Handbooks, and MHA Performance Reports and Servicer  
6 Assessments published by the government and available to the public on the  
7 Department of the Treasury's website.<sup>3</sup> Publicly available Federal Agency  
8 Handbooks, Directives, and Guidelines are judicially noticeable. *See Curtis v.*  
9 *Nationstar Mortgage LLC*, No. 14-CV-05167-HRL, 2016 WL 1275599, at \*1 (N.D.  
10 Cal. Apr. 1, 2016) (taking judicial notice of three sections of the MHA Program  
11 Handbook); *see also Peviani v. Hostess Brands, Inc.*, 750 F. Supp. 2d 1111, 1116  
12 (C.D. Cal. 2010) (taking notice of an FDA regulatory guideline); *Hansen Beverage*  
13 *Co. v. Innovation Ventures, LLC*, No. 08-CV-1166-IEG POR, 2009 WL 6597891, at  
14 \*2 (S.D. Cal. Dec. 23, 2009) (explaining that information on government agency  
15 websites is often judicially noticeable).

16 • **Exhibit 39:** Making Home Affordable: Home Affordable Modification  
17 Program, Supplemental Directive 09-01 (April 6, 2009)

18 • **Exhibit 40:** Making Home Affordable Program Handbook for Servicers of  
19 Non-GSE Loans, Version 1.0 (August 8, 2010)

20 • **Exhibit 41:** Making Home Affordable Program Handbook for Servicers of  
21 Non-GSE Loans, Version 2.0 (September 22, 2010)

22 • **Exhibit 42:** Making Home Affordable Program Handbook for Servicers of  
23 Non-GSE Loans, Version 3.0 (December 2, 2010)

24 • **Exhibit 43:** Making Home Affordable Program Handbook for Servicers of  
25 Non-GSE Loans, Version 3.1 (May 2, 2011)

26  
27 <sup>3</sup> All MHA Directives, MHA Handbooks, and MHA Performance Reports and  
28 Servicer Assessments are available at:  
<<https://www.hmpadmin.com/portal/programs/guidance.jsp>>.



- 1 • **Exhibit 44:** Making Home Affordable Program Handbook for Servicers of  
2 Non-GSE Loans, Version 3.2 (June 1, 2011)
- 3 • **Exhibit 45:** Making Home Affordable: Program Performance Report Through  
4 April 2011 (June 9, 2011)
- 5 • **Exhibit 46:** Making Home Affordable Compensation Matrix (June 2011)
- 6 • **Exhibit 47:** Making Home Affordable: Home Affordable Modification  
7 Program, Supplemental Directive 11-06 (July 6, 2011)
- 8 • **Exhibit 48:** Making Home Affordable: Program Performance Report Through  
9 July 2011 (September 1, 2011)
- 10 • **Exhibit 49:** Making Home Affordable Program Handbook for Servicers of  
11 Non-GSE Loans, Version 3.3 (September 1, 2011)
- 12 • **Exhibit 50:** Making Home Affordable Program Handbook for Servicers of  
13 Non-GSE Loans, Version 3.4 (December 15, 2011)
- 14 • **Exhibit 51:** Making Home Affordable Program Handbook for Servicers of  
15 Non-GSE Loans, Version 4.0 (August 17, 2012)
- 16 • **Exhibit 52:** Making Home Affordable Program Handbook for Servicers of  
17 Non-GSE Loans, Version 4.1 (December 13, 2012)
- 18 • **Exhibit 53:** Making Home Affordable Program Handbook for Servicers of  
19 Non-GSE Loans, Version 4.2 (May 1, 2013)
- 20 • **Exhibit 54:** Making Home Affordable Program Handbook for Servicers of  
21 Non-GSE Loans, Version 4.3 (September 16, 2013)
- 22 • **Exhibit 55:** Making Home Affordable Program Handbook for Servicers of  
23 Non-GSE Loans, Version 4.4 (March 3, 2014)
- 24 • **Exhibit 56:** Making Home Affordable: Program Performance Report Through  
25 January 2014 (March 7, 2014)
- 26 • **Exhibit 57:** Making Home Affordable: Program Performance Report Through  
27 April 2014 (June 13, 2014)
- 28



- 1 • **Exhibit 58:** Making Home Affordable Program Handbook for Servicers of  
2 Non-GSE Loans, Version 4.5 (June 1, 2015)
- 3 • **Exhibit 59:** Making Home Affordable: Results by Servicer, Program  
4 Performance Report First Quarter 2015 (June 5, 2015)
- 5 • **Exhibit 60:** Making Home Affordable Program Handbook for Servicers of  
6 Non-GSE Loans, Version 5.0 (January 6, 2016)
- 7 • **Exhibit 61:** Making Home Affordable Program Handbook for Servicers of  
8 Non-GSE Loans, Version 5.1 (May 26, 2016)

#### 9 **IV. Court Filings**

10 Exhibits 62-87 are filings from proceedings in Federal and State Courts and  
11 from the California State Bar Court. Because the accuracy of such records cannot  
12 reasonably be questioned, federal courts routinely take judicial notice of court records  
13 and rulings. *See Reyn's Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 n.6  
14 (9th Cir. 2006) (“We may take judicial notice of court filings and other matters of  
15 public record.”); *see also Intri-Plex Techs., Inc. v. Crest Group, Inc.*, 499 F.3d 1048,  
16 1052 (9th Cir. 2007) (taking judicial notice of state court complaint and pleadings in  
17 related action); *United States v. Howard*, 381 F.3d 873, 876 n.1 (9th Cir. 2004) (“[A]  
18 court may take judicial notice of court records in another case.”) (citing *United States*  
19 *v. Wilson*, 631 F.2d 118, 119 (9th Cir. 1980); *No Cost Conference, Inc. v. Windstream*  
20 *Comm., Inc.*, 940 F. Supp. 2d 1285, 1296 (“The two court-filed complaints are  
21 properly subject to judicial notice as court records in the instant action and a related  
22 case.”); *Cabrera v. Rameriz*, No. 1:15-cv-00067-AWI-JLT, 2015 WL 574342, at \*1  
23 n.1 (E.D. Cal. Feb. 10, 2015) (taking judicial notice of a complaint in a separate action  
24 and collecting cases); *Rosal v. First Federal Bank of California*, 671 F.Supp.2d 1111,  
25 1121 (N.D. Cal. 2009) (taking judicial notice of bankruptcy court filings). Similarly,  
26 “decisions and orders that were filed by the State Bar Court and the California  
27 Supreme Court during Plaintiff's disciplinary proceedings” are also judicially  
28



noticeable. *Martin v. State Bar of California*, No. C 11-3601 CW, 2012 WL 1225763, at \*2 (N.D. Cal. 2012).

• **Exhibit 62:** Dkt. 84 (Third Amended Consolidated Class Action Complaint), *In re Bank of America Home Affordable Modification Program (HAMP) Contract Litigation*, Case No. 10-md-02193 (D. Mass.)

• **Exhibit 63:** Dkt. 1 (Complaint), *United States, et al., v. Bank of America Corp. et al.*, Case No. 12-cv-00361 (D.D.C.), available at:

<<http://www.nationalmortgagesettlement.com/settlement-documents>>

• **Exhibit 64:** Dkt. 10 (Consent Judgment - Citi), *United States, et al., v. Bank of America Corp. et al.*, Case No. 12-cv-00361 (D.D.C.)

• **Exhibit 65:** Dkt. 11 (Consent Judgment – Bank of America), *United States, et al., v. Bank of America Corp. et al.*, Case No. 12-cv-00361 (D.D.C.)

• **Exhibit 66:** Dkt. 14 (Consent Judgment – Wells Fargo), *United States, et al., v. Bank of America Corp. et al.*, Case No. 12-cv-00361 (D.D.C.)

• **Exhibit 67:** Dkt. 1 (Complaint), *U.S. ex rel. Mackler v. Bank of America*, Case No. 11-cv-3270 (E.D.N.Y.)

• **Exhibit 68:** Complaint, *Kahlo v. Bank of America, N.A.*, Case No. 12-cv-00083 (W.D. Wash.)

• **Exhibit 69:** Dkt. 4 (Amended Complaint), *Flynn, et al. v. NV Mortgage, Inc., et al.*, Case No. 13-cv-00360 (W.D. Wash.)

• **Exhibit 70:** Dkt. 1 (Complaint), *Lesniak v. Bank of America, N.A.*, Case No. 13-cv-04694 (N.D. Ill.)

• **Exhibit 71:** Dkt. 1 (Class Action Complaint), *Davis v. Bank of America, N.A.*, Case No. 13-cv-02409 (D. Kan.)

• **Exhibit 72:** Dkt. 12 (First Amended Class Action Complaint), *George v. Urban Settlement Services*, Case No. 13-cv-01819 (D. Colo.)

• **Exhibit 73:** Dkt. 1 (Complaint), *Deangeles v. Bank of America Corp.*, Case No. 13-cv-08637 (N.D. Ill.)



- 1 • **Exhibit 74:** Dkt. 1 (Complaint), *Jimenez v. Bank of America, N.A.*, Case No.  
2 13-cv-07221 (E.D.N.Y.)
- 3 • **Exhibit 75:** Dkt. 1 (Complaint), *Kane v. Bank of America, N.A.*, Case No. 13-  
4 cv-08053 (N.D. Ill.)
- 5 • **Exhibit 76:** Dkt. 61 (First Amended Complaint), *Federal Trade Commission v.*  
6 *Kutzner, et. al.*, Case No. SACV-00999 (E.D. Cal.)
- 7 • **Exhibit 77:** Dkt. 1 (Complaint), *Pshevlovzky v. Bank of America, N.A.*, Case  
8 No. 12-cv-00667 (E.D. Cal.)
- 9 • **Exhibit 78:** *In re Hall*, State Bar Court of California, Case No. 11-O-15178  
10 (Stipulation re Facts, Conclusions of Law and Disposition and Order Approving;  
11 Order of Involuntary Inactive Enrollment, filed November 9, 2011)
- 12 • **Exhibit 79:** Case Summary for Defendant Jose Arturo Abad Vega, *People v.*  
13 *Jose Arturo Abad Vega and Dean Eric Toro*, Case No. 11-cf-1447
- 14 • **Exhibit 80:** Decl. ISO Arrest Warrants, *People v. Jose Arturo Abad Vega and*  
15 *Dean Eric Toro*, Case No. 11-cf-1447
- 16 • **Exhibit 81:** Second Amended Complaint, *Williams v. Bank of America, N.A.*,  
17 Case No. TC027862
- 18 • **Exhibit 82:** Order re Plaintiff's Motion to Vacate, *Williams v. Bank of*  
19 *America, N.A.*, Case No. TC027862
- 20 • **Exhibit 83:** Case Summary, *Williams v. Bank of America, N.A.*, Case No.  
21 TC028304
- 22 • **Exhibit 84:** Decision and Order of Involuntary Inactive Enrollment, *In re Vito*  
23 *Torchia, Jr.*, State Bar Court No. 13-O-14835
- 24 • **Exhibit 85:** Dkt. 18, Ex. 1 (State Bar of California Address History Re: Vito  
25 Torchia), Case No. 16-cv-00999
- 26 • **Exhibit 86:** Request for Dismissal, *Williams v. Bank of America, N.A.*, Case  
27 No. TC028304
- 28



1 • **Exhibit 87:** *In re Vito Torchia, Jr.*, State Bar Court No. 13-O-14835 (April 29,  
2 2016)

3 **V. Other Publicly-Available Documents**

4 Exhibits 88 and 89 are an excerpt from a Pooling and Servicing Agreement and  
5 an excerpt from the Fannie Mae Single Family 2011 Servicing Guide, both of which  
6 are publicly available and judicially noticeable. The Court may take judicial notice of  
7 the existence and authenticity of publicly available documents that are not reasonably  
8 subject to dispute. *Certain Underwriters at Lloyd's v. Coastal States Mortgage Corp.*,  
9 2014 WL 11380937 (S.D. Fla. 2014) (taking judicial notice of a Fannie Mae Single  
10 Family Servicing Guide); *see also Peviani v.* 750 F. Supp. 2d at 1116 (taking judicial  
11 notice of a publicly-available, nonbinding regulatory guideline). This includes public  
12 records that are maintained by the government, and courts have expressly held that  
13 “SEC filings . . . are judicially noticeable.” *Glenbrook Capital Ltd. P’ship v. Kuo*, 525  
14 F. Supp. 2d 1130, 1137 (N.D. Cal. 2007); *see also In re NAHC, Inc. Sec. Litig.*, 306  
15 F.3d 1314, 1331 (3d Cir. 2002) (courts may take judicial notice of documents filed  
16 with the SEC); *Cannon v. District of Columbia*, 717 F.3d 200, 205 n.2 (D.C. Cir.  
17 2013). Additionally, the PSA is referenced in the Fourth Amended Complaint  
18 because it relates to the trust that holds Relator Williams’ loan (Complaint ¶ 59) and  
19 thus is judicially noticeable under the incorporation by reference doctrine. *Davis v.*  
20 *HSBC Bank Nevada, N.A.*, 691 F.3d 1152, 1160 (9th Cir. 2012); *see also NYC*  
21 *Topanga, LLC v. Bank of America*, No. CV 14-09721-AB, 2015 WL 4075844, at \*2-3  
22 (C.D. Cal. July 2, 2015) (judicially noticing agreements expressly referenced in  
23 complaint); *Olenicoff v. UBS AG*, No. SACV 08-1029 AG, 2009 WL 481281, at \*3  
24 (C.D. Cal. Feb. 24, 2009) (“The Subscription Agreement is referenced in the FAC,  
25 and the Court may take judicial notice of the agreement under the ‘incorporation by  
26 reference doctrine.’”).

27 • **Exhibit 88:** Pooling and Servicing Agreement, Securitized Asset Backed  
28 Receivables LLC Trust 2005-FR4 (September 1, 2005), available at:



1 <<https://www.sec.gov/Archives/edgar/data/1339777/000116231805000873/m465p>  
2 sa.htm>

- 3 • **Exhibit 89:** Fannie Mae Single Family 2011 Servicing Guide (June 10, 2011),  
4 available at: <<https://www.fanniemae.com/content/guide/svc061011.pdf>>

5 **CONCLUSION**

6 For the foregoing reasons, Defendants respectfully request that the Court grant  
7 this request, and take judicial notice of Exhibits 1-89 hereto.

8 Respectfully submitted,

9  
10 Dated: September 12, 2016

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Bank National Trust Company as trustee,  
20 and The Bank of New York Mellon and  
The Bank of New York Mellon Trust  
21 Company, N.A. as trustee and/or  
successor trustee to JP Morgan Chase  
22 Co. as trustee

23 Dated: September 12, 2016

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**FILER'S ATTESTATION**

Pursuant to L.R. 5-4.3.4(a)(2)(i), I, Anand Singh, attest that all other signatories listed, and on whose behalf this document is submitted, concur in the document's content and have authorized its filing and the placement of their electronic signatures above.

By: /s/s Anand Singh  
Anand Singh